

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Before the court is defendant the United States Forest Service’s (“Forest Service”) motion to dismiss. Doc. #11.<sup>1</sup> Plaintiff Jeff Randall (“Randall”) filed an opposition (Doc. #14) to which the Forest Service replied (Doc. #18).

## I. Facts and Background

This action involves a dispute concerning improvements and title to real property. Randall is the current owner of real property located in Incline Village, Nevada. The Forest Service is the current owner of real property located adjacent to Randall's property in Incline Village, Nevada.

Randall alleges that on or about 1979 his predecessor in interest constructed certain improvements on approximately 500 square feet of land on land previously owned by the Forest

<sup>1</sup> Refers to the court's docket number.

1 Service and acquired by his predecessor through adverse possession. Randall further alleges that  
2 the improvements at issue were already in existence at the time Randall acquired his property.

3 On January 26, 2009, the Forest Service issued Randall a trespassing violation for  
4 unauthorized improvements on United States land. Subsequently, on September 30, 2009, Randall  
5 filed a complaint against defendant asserting claims for adverse possession and trespass over land  
6 that Randall alleges he acquired from the property's previous owner. Doc. #1.

7 On March 25, 2010, Randall filed an amended complaint against the Forest Service alleging  
8 five causes of action: (1) declaratory relief; (2) adverse possession; (3) negligence; (4) injunctive  
9 relief; and (5) trespass. Doc. #9. Thereafter, the Forest Service filed the present motion to dismiss.  
10 Doc. #11.

11 **II. Discussion**

12 The Forest Service argues that the complaint should be dismissed in its entirety  
13 because (1) Randall failed to exhaust his administrative remedies, (2) the United States has not  
14 waived its sovereign immunity, and (3) the claims are not pled with sufficient particularity.  
15 Doc. #11. The court shall address each argument in turn.

16 **A. Administrative Exhaustion**

17 A plaintiff must exhaust available administrative remedies with a federal agency prior to  
18 bring a grievance to federal court. *See* 7 U.S.C. § 6912(e); 36 C.F.R. § 215.21. “To satisfy the  
19 exhaustion requirement, plaintiffs ‘generally must structure their participation so that it alerts the  
20 agency to the parties’ position and contentions, in order to allow the agency to give the issue  
21 meaningful consideration.’” *Forest Guardians v. U.S. Forest Serv.*, 578 F.3d 1114, 1120  
22 (9th Cir. 2009) (quoting *Forest Guardians v. U.S. Forest Serv.*, 495 F.3d 1162, 1170  
23 (10th Cir. 2007)). Failure to exhaust available administrative remedies operates as a jurisdictional  
24 bar to suit. *See Id.* at 1121; *see also Jerves v. United States*, 966 F.2d 517, 519 (9th Cir. 1992).

25 Here, Randall failed to file an administrative claim with the Forest Service before filing his  
26

1 complaint. However, Randall argues that exhaustion is unnecessary in this instance because  
 2 exhaustion would have been futile. *See e.g., Aleknagik Natives Ltd. v. Andrus*, 648 F.2d 496, 499  
 3 (9th Cir. 1980) (plaintiffs need not exhaust administrative remedies when doing so would be  
 4 futile); *see also Forest Guardians v. Forest Service*, 579 F.3d 1114 (9th Cir. 2009). Exhaustion is  
 5 futile if the administrative agency has already commenced an action concerning the underlying  
 6 issue against the plaintiff. *Desert Outdoor Advertising v. City of Moreno Valley*, 103 F.3d 814, 818  
 7 (9th Cir. 1996) (holding that exhaustion would have been futile in a permit action when the city  
 8 already ordered plaintiff to remove signs).

9 The court finds that the exhaustion requirement would be futile in this instance because the  
 10 Forest Service commenced an action in trespass against Randall for the property at issue.  
 11 Accordingly, the court finds that Randall's suit may proceed against the Forest Service.

12 **B. Sovereign Immunity**

13 The United States is immune from any suit unless it explicitly consents to be sued by  
 14 statute. *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981); *McGuire v. United States*, 550 F.3d 903,  
 15 910 (9th Cir. 2008). When pleading a cause of action against the United States, a plaintiff must  
 16 identify the statute that specifically authorizes a suit against the United States. *United States v.*  
 17 *Idaho*, 508 U.S. 1, 6-7 (1993). Here, the Forest Service contends that Randall's amended complaint  
 18 fails to identify any statute which waives the United States sovereign immunity and should be  
 19 dismissed.

20 In his complaint, Randall identifies the Federal Tort Claims Act, 28 U.S.C. § 1346(b), as  
 21 establishing jurisdiction against the United States in this action. Pursuant to that act, "district courts  
 22 . . . shall have exclusive jurisdiction of civil actions on claims against the United States, . . . caused  
 23 by the negligent or wrongful act or omission of an employee of the Government . . ." 28 U.S.C. §  
 24 1346(b). Accordingly, the court finds that Randall has established that the United States has  
 25 waived its sovereign immunity in this action.

1           Additionally, Randall bring his claims for declaratory relief and adverse possession under  
2 the Quiet Title Act, 28 U.S.C. § 2409a. Pursuant to the Quiet Title Act, “the United States may be  
3 named as a defendant in a civil action . . . to adjudicate a disputed title to real property in which the  
4 United States claims an interest.” 28 U.S.C. § 2409a(a).

5       Here, the underlying dispute is over the title to real property the Forest Service claims an  
6 interest in. Thus, the United States has waived its sovereign immunity in this action as to Randall's  
7 declaratory relief claim. However, Randall's claim for adverse possession may not be brought  
8 under the Quiet Title act and shall be accordingly dismissed. *See* 28 U.S.C. § 2409a(n) ("Nothing  
9 in this section shall be construed to permit suits against the United States based upon adverse  
10 possession.").

## 11 || C. Individual Claims

12 Randall alleges in his complaint that the Quiet Title Act provides a statutory basis for his  
13 declaratory relief quiet title claim and his adverse possession claim against the Forest Service.  
14 Pursuant to the Quiet Title Act, a complaint is required to set forth with particularity “the nature of  
15 the right, title, or interest which the plaintiff claims in the real property, the circumstances under  
16 which it was acquired, and the right, title, or interest claimed by the United States.”  
17 28 U.S.C. § 2409a(d).

18 The court finds that Randall's complaint complies with the requirements of the Quiet Title  
19 Act. The complaint identified the nature of Randall's right over the property and the circumstances  
20 in which it was acquired by his purchase of the land from the previous owners who allegedly  
21 acquired the property through a recognized adverse possession as well as the competing interest  
22 and right claimed by the United States. Accordingly, Randall has sufficiently pled claims under the  
23 Quiet Title Act.

24 | //

25 | //

1 IT IS THEREFORE ORDERED that defendant's motion to dismiss (Doc. #11) is  
2 GRANTED in-part and DENIED in-part. Plaintiff's cause of action for adverse possession is  
3 DISMISSED.

4 IT IS SO ORDERED.

5 DATED this 9th day of September, 2010.



6  
7 LARRY R. HICKS  
8 UNITED STATES DISTRICT JUDGE  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26